

HOUSE BILL 2178  
By Turner M

AN ACT to amend Tennessee Code Annotated, Title 5; Title 6; Title 7 and Title 12, Chapter 4, relative to best value contracting.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) The purpose of best value contracting is to permit contracting agencies to make awards for construction, renovation, installation, alteration, extension, removal, repairs, maintenance, or servicing that will result in the best overall value and greatest overall benefit to the government, schools, and utilities by allowing factors other than price to be considered in the solicitation process.

(1) Best value contracting seeks to promote successful contracting through the objective, systematic evaluation of contractor's performance capabilities based on predetermined criteria and source selection procedures identified by the contracting agency.

(2) In particular, the best value contracting method allows for the evaluation of qualitative factors, such as past performance, experience, and technical capability, that are likely to impact the overall success of a contract in terms of quality, cost, schedule, and responsiveness to the needs of the contracting agency and public.

(b) As used in this act unless the context otherwise requires, "contracting agency" means any department, agency, board, commission, utility district, authority, or any other unit or entity of state, county, or municipal government.

(c) When a contracting agency determines that the use of sealed bidding is either not practicable or not advantageous to the contracting agency, a contract may be

entered into by best value contracting, subject to the following provisions and any additional regulations issued by the contracting agency.

(d) Adequate public notice of the best value contracting solicitations shall be given in the same manner as provided for with respect to sealed bid contracts.

(e) Best value contracts shall be solicited through requests for competitive sealed proposals (RFPs), which shall advise the public that the subject contract will be a "best value" contract awarded according to the rules and procedures set forth in this section.

(f) In all best value contract solicitations, price or cost to the contracting agency and past contract performance must be identified as evaluation factors in the RFP and must be considered by the contracting agency in making contract awards.

(g) Additional nonprice factors that shall be considered by the contracting agency shall include, but are not limited to, the following:

(1) Financial stability and financial capabilities;

(2) Bonding capacity and ability to provide performance and payment bonds for the contract project;

(3) Past contract performance, including quality of performance, schedule compliance, budget compliance, cost control, and responsiveness to customer needs and interests;

(4) Specialized experience or experience with similar projects;

(5) Qualifications and experience of key management and professional personnel;

(6) Quality of human resources, including the completion of skill training and apprenticeship programs approved by the bureau of apprenticeship training (B.A.T.) of the U.S. Department of Labor by craft personnel.

(7) Project staffing capabilities, including the number and qualifications of in-house employees, as well as outside personnel resources available to contractor.

- (8) Scheduling plan / project management plan / technical approach, including reliability of delivery and implementation schedules;
- (9) Technical resources, including equipment, computer, and data processing capabilities;
- (10) Subcontracting plans, including listings of project subcontractors and identification of the performance capabilities of such contractors;
- (11) Disadvantaged / women / small business capabilities or initiatives;
- (12) Quality control, quality assurance, or quality management programs;
- (13) Warranties or guarantees provided on contract work;
- (14) Safety programs and safety record, including experience modification rating and OSHA 10-hour training;
- (15) Drug testing programs, including pre-hire, post-accident and random drug screenings;
- (16) Environmental objectives, such as promoting energy efficiency, waste reduction, source reduction, and maximum practicable recovered material content;
- (17) Record of compliance and payment of required prevailing wage rate;
- (18) Health insurance for employees and employees' families; and
- (19) Record of business integrity, including any incidents of current or past law violations, or criminal, civil, or administrative complaints or charges.

(h) The following conditions shall apply to all RFPs issued in best value solicitations:

- (1) Each RFP shall identify the basic scope and needs of the project or contract, the expected cost range and other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.
- (2) Each RFP shall invite interested parties to submit competitive sealed proposals in the manner prescribed by the contracting agency.
- (3) Each RFP shall include a section identifying and describing:

(A) All significant factors and subfactors which the contracting agency reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors;

(B) The methodology and rating or weighting scheme that will be used by the contracting agency in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values;

(C) The relative importance assigned to each of the factors identified in the RFP;

(D) With respect to subdivision (3)(C) of this subsection, the contracting agency shall specifically disclose whether all evaluation factors other than cost or price when combined, are:

- (i) Significantly more important than cost or price;
- (ii) Approximately equal in importance to cost or price; or
- (iii) Significantly less important than cost or price.

(4) If the contracting agency wishes to reserve the right to hold discussions or negotiations with officers, it shall specify such right in the RFP and shall publish separately or incorporate into the RFP applicable rules and procedures to be observed by the contracting agency to ensure that any such discussions or negotiations are conducted in a fair and impartial manner.

(i) Competitive proposals shall be evaluated by using only the criteria and source selection procedures specifically identified in the RFP. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the contracting agency.

(j) The award of the contract must be made to the responsive and responsible bidder whose proposal is determined, in writing, to be most advantageous to the contracting agency.

(1) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the RFPs.

(2) The contracting agency shall issue a written decision supporting its contract award and stating in detail the basis of the award. This decision and the contract file must be sufficient to satisfy an external audit.

(3) Best value contract decisions shall be approved by at least two (2) officials responsible for the solicitation, including one (1) supervisor, from the contracting agency, each of whom shall review all competitive proposals, or summaries thereof, in light of the evaluation criteria specified in the RFP and certify that, in their professional opinion, the proposal selected is the one most advantageous to the contracting agency.

(k) Upon issuance of a contract award, the contracting agency shall, consistent with the conditions specified below, publicly announce its award in accordance with the public notice requirements applicable to sealed bidding. Such notice shall include, at a minimum:

(1) The identify of the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the RFP evaluation factors;

(2) The contracting agency's ranking of all other offers and their respective price proposals; and

(3) A summary of the contracting agency's rationale for the contract award.

SECTION 2. The provisions of this act supersede any law, charter, private act, resolution, or ordinance to the contrary.

SECTION 3. This act shall take effect July 1, 2004, the public welfare requiring it